

STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE: Thomas F. Jr. & Patricia C. Frist)
 Map 144-02-0, Parcel 3.00) Davidson County
 Residential Property)
 Tax Years 2005 & 2006)

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$5,184,300	\$7,617,800	\$12,802,100	\$3,200,525

Appeals have been filed on behalf of the property owner with the State Board of Equalization for both tax years.

This matter was reviewed by the undersigned administrative law judge pursuant to Tennessee Code Annotated (T.C.A.) §§ 67-5-1412, 67-5-1501 and 67-5-1505. This hearing was conducted on February 1, 2007, at the Davidson County Property Assessor's Office. Present at the hearing were Agents Daniel Drake and John "Jay" Catignani, taxpayer representatives. Present for the County were Dean Lewis, Real Property Manager from the Assessor's Office and Jason Poling, Residential Appraiser, also from the Division of Assessments for the Metro. Property Assessor's Office.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of a single family residence with an approximately finished area of 21,285 square feet, located on 37.67 acres at 1304 Chickering Road in Nashville, Tennessee¹.

A pre-hearing objection was entered by Mr. Dean Lewis for the county contesting the legality of the Frist's having two "Tax Reps" or Co-Agents representing them at the hearing. Mr. Lewis is relying on his interpretation of Rule 0600-1-.07 (3) of the State Board of Equalization Contested Case Procedures states:

(3) When a party is represented by an agent, only the agent is entitled to question witnesses and present argument at any stage of the case. An agent may not participate in the hearing of an appeal if he or she actually represents another agent or person who is not a party in the proceeding.

¹ All parties agree that this is possibly the largest single family residence in Davidson County and a unique property with the structure being custom built with a steel frame and other very unique features. The parties disagree with amount of 'weighted' square footage 23,062 for the County and 19,587 for the taxpayer.

Mr. Lewis interprets this Rule to mean that only one (1) agent can participate in a case, the administrative judge disagrees. Mr. Drake is the agent who filed the appeal forms on behalf of the Frist family for both tax years. (Exhibit #4 from Mr. Drake is an authorization for tax year 2005). For tax year 2006 Mr. Drake was asked to file as a 'late filed' exhibit the authorization since he did not have one readily in his file. Because Mr. Drake then Mrs. Frist were both unavailable, the exhibit was not received until February 27, 2007. Mr. Lewis objects to the authorization being admitted since it was signed on February 23, 2007 (sometime after the February 1st hearing date). The administrative judge finds that judicial economy dictates that any 'error' in the date on the authorization is a harmless error and unless Mr. Lewis can demonstrate some prejudice to the county, the exhibit is accepted.

The administrative judge further believes that an analysis to this issue of having co-tax agents/representatives is akin to one individual having a team of attorneys to represent them in any legal proceeding. While any attorney would be allowed to participate at a trial/hearing, each would have specific responsibilities, as in the present case with Mr. Drake presenting the Equalization argument and Mr. Catignani advancing the Sales Comparison Approach to value. While a Court would allow their participation in the trial/hearing, the attorneys would not be allowed to "double team" a witness. Mr. Lewis' objection is overruled and the case will proceed with a hearing on the merits.

As previously stated, the taxpayer is attacking the county's contention of value on 2 levels. The first argument is based on an Equalization argument whereby Mr. Drake contends that the subject property is appraised 62% greater in value than other properties in the area. He states that "from tax year 2003 to 2004 the increase was 28%". He further states that "similar properties should be valued similarly. In comparing thirteen (13) properties the 'average' residential building value was \$255 per square foot which when applied to the subject, gives an equalized value of \$10,179,000".

He relies on the holding in *Payton and Melissa Goldsmith*, Shelby County, Tax year 2001, Assessment Appeals Commission decision whereby the Commission found "compelling circumstances" to deviate from the century old decision in *Carroll v. Alsup, et.al.*, 107 Tenn. 257, 64 S.W. 193 (1901)². Mr. Drake contends that the "compelling circumstances" include the quality of the subject, the size of the subject and other features and amenities unique to this property.

² The case succinctly stands for the proposition that it is no grounds for relief to argue how little or much your neighbors property is assessed, the remedy would be to raise the neighbor's property values not reduce the subject.

Mr. Lewis contends that there are no "compelling circumstances" in this case. He stated that Mr. Drake has not demonstrated that the subject has been singled out for different treatment. Mr. Lewis also relies on a case from New Jersey, *CPC Intl, Inc v. BOR of Englewood Cliffs*, 193 N.J. Super. 261, 473 A.2d548 (1983) which discusses in dicta, about recoverable market value for "over-improvements and features" in determining marketability of a property.³ Mr. Lewis argues that when the Frist built their home, "a place of splendor and magnificence", it was built for a specific purpose which is currently being fulfilled, the fact that if it were sold the probability of realizing the value of construction is slim unless the sale is to a person of a similar taste for opulence and an ability to pay for same. These are not "compelling circumstances" which entitle the taxpayer to a deviation of the acceptable legal standard in under *Goldsmith*, id.

The county further argues that any equalization argument should not be considered based upon that standard and that in the State of Tennessee, property is assessed at 100% of its market value⁴.

The basis of valuation as stated in Tenn. Code Ann. § 67-5-601(a) "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of a **sale** between a willing seller and a willing buyer without consideration of speculative values" (Emphasis supplied). The germane issues are the values of the subject property as of January 1, 2005 and January 1, 2006, respectively.

The next argument submitted on behalf of the taxpayers was presented by Mr. Catignani using the sales comparison approach (taxpayers collective exhibits #3 & #4). Mr. Catignani used the sales of thirteen (13) properties in the area of the subject property in an attempt to demonstrate that the values set by the County Board were incorrect.⁵ Mr. Catignani believes the property is worth, \$10,450,000. Using the paired data analysis Mr. Catignani attempted to support his value by making adjustments to the comparables based on features of the subject. He then, however, used the 'average' residential building value per square foot in order to arrive at his values by indicating that "the subject would fall at the high end of the range from the comparable sales and/or \$250/sf", while the 'average' value was \$205/sf." How he came up with the \$250/sf is unclear and similar to

³ Mr. Lewis argues that when a building is erected for an owner's own needs, they remain in possession and continue to enjoy the improvements which were installed they should not complain about cost. He also notes that during the discovery process he attempted to get building cost values and has been unable to secure them from Mr. Drake.

⁴ All property must be valued under the constitution of the State of Tennessee at 100% of market value, and failure of a taxing authority to so value one or more subclasses whose property is appraised at market value to seek and obtain equalization. Constitution of Tennessee Article 2, §28. *Louisville and Nashville Railroad Company, et al. v. Public Service Commission of Tennessee*, 493 F. Supp 162 (M.D. Tenn., 1978).

⁵ Mr. Catignani acknowledges, "While none of these sales approach the size of the subject, you can count the number of single family residences in excess of 20,000 square feet in Nashville on one hand in the last 20 years".

a PFA factor⁶ without a rational basis to the accepted appraisal standards other than stating; "Normally the indicated unit value/psf are higher on smaller size homes and lower on larger size homes. Subject property is twice the size of the average of the 13 sales, and/or 10,185 vs 19,587 sf". That information does not explain to me how he arrived at his figures to get to the bottom line.

The assessor contends that the property should be valued at \$12,802,100. To substantiate this position the county submits seven (7) comparable sales to show that the value set by the Davidson County Board of Equalization is correct. (The county was also unable to find sales of property comparable in size to the subject). A presumption of correctness does attach to the County Board decision and it is on that presumption that administrative judge relies.

Since the taxpayer is appealing from the determination of the Davidson County Board of Equalization, the burden of proof is on the taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Control Board*, 620 S.W. 2d 515 (Tenn. App. 1981).

The taxpayers must meet their burden in order to receive their requested relief, a reduction in the appraised value of the subject property. In order to accomplish that burden the taxpayer must show by the "preponderance of the evidence" that values set by the Davidson County Board of Equalization do not correctly reflect the fair market value of the subject property as of the date of assessment. A "preponderance of the evidence" means the greater weight of the evidence or that, according to the evidence, the conclusion sought by the party with the burden of proof is the more probable conclusion. *Uniform Rules of Procedure for Hearing Contested Cases*. Rule 1360-4-1-.02(7)

As to Mr. Drakes' arguments on the theory of equalization the administrative judge is of the opinion that Mr. Drake did not meet his burden, there was no showing of "compelling circumstances" in his presentation. The fact, in and of itself, that the home is valued more than the neighbors must be balanced with the quality and size of the subject as compared to the neighbors. It has been repeatedly stated by both the taxpayers' representatives and the county that the subject property is a unique construction and one of the largest homes in the county.

As the Assessment Appeals Commission noted in *Payton and Melissa Goldsmith*, Shelby County, Tax year 2001, in quoting the Tennessee Supreme Court in the case of Carroll v. Alsup, 107 Tenn. 257, 64 S.W.193 (1901):

⁶ 'Plucked from the air'.

It is no ground for relief to him; nor can any taxpayer be heard to complain of his assessments, when it is below the actual cash value of the property, **on the ground that his neighbors' property is assessed at a less percentage of its true or actual value than his own.** When he comes into court asking relief of his own assessment, **he must be able to allege and show that his property is assessed at more than its actual cash value.** He may come before an equalizing board, or perhaps before the courts, and show that his neighbors' property is assessed at less than its actual value, and **ask to have it raised to his own,** . . . (emphasis supplied)

With respect to the issue of market value, the administrative judge finds that Mr. Catignani did not introduce sufficient evidence to affirmatively establish the market value of subject property as of January 1, 2005 and January 1, 2006, the relevant assessment date pursuant to T. C. A. § 67-5-504(a).

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax years 2005 and 2006:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$5,184,300	\$7,617,800	\$12,802,100	\$3,200,525

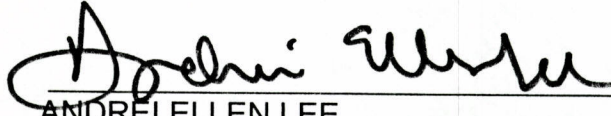
It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 29th day of March, 2007.



ANDREI ELLEN LEE
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Mr. Daniel W. Drake
Mr. Jay Catignani
Jo Ann North, Assessor of Property